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Of Attorneys for Defendant The Dominican Sisters
Of Ontario, Inc. Dba Holy Rosary Medical Center

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

EDNA M. SONSTENG,

Case No. CV06 476 SU

Plaintiff,

**DEFENDANT HOLY ROSARY
MEDICAL CENTER'S RESPONSE
TO PLAINTIFF'S SUPPLEMENTAL
REPLY MEMORANDUM**

-vs-

**THE DOMINICAN SISTERS OF ONTARIO,
INC.,** an Oregon non-profit corporation,
dba, **HOLY ROSARY MEDICAL CENTER;**
**JOSEPH J. BOYLE, M.D., and FRANK
J. SPOKAS, M.D.,**

Defendants.

Both defendant Boyle and defendant Spokas have filed lengthy
responses to Plaintiff's Supplemental Reply Memorandum. The

allegations against defendant Holy Rosary Medical Center contained in plaintiff's Amended Complaint are identical to the allegations against defendant Boyle. Accordingly, defendant Holy Rosary Medical Center relies upon and incorporates by reference the responding memoranda filed by co-defendants in this case with the additional points and authorities below.

It is the position of defendant Holy Rosary Medical Center and consistent with its Memorandum in support of its Motion to Dismiss Plaintiff's Amended Complaint that plaintiff's Amended Complaint is one for wrongful death, not survival and that the applicable statute of limitations is contained in ORS 30.020. Plaintiff has essentially conceded this in his Supplemental Memorandum (Pl Supplemental Memorandum ppl, lines 2,3). For all of the reasons set forth in co-defendant Spokas' Response to Plaintiff's Supplemental Reply Memorandum, the applicable statute of ultimate repose under ORS 30.020 is ORS 12.110(4) as the "act or omission causing the injury" (i.e. death) claimed by plaintiff in his Amended Complaint is medical negligence. ORS 12.110(4) is the more specific limitation applicable only to medical negligence claims. Thus, ORS 12.110(4) is the statute of ultimate repose "that applies" for purposes of ORS 30.020, not ORS 12.115 as plaintiff argues.

Finally, while defendant Holy Rosary Medical Center does not believe plaintiff's amended complaint states a claim under the

survival statute, if this Court concludes that it does, the applicable limitations period is again ORS 12.110(4) as the second sentence of ORS 30.075(1) provides that the action "shall be commenced within the limitations established in ORS 12.110 . . .". Again, for the reasons set forth in co-defendants' memoranda (which this defendant relies upon and incorporates by reference), the applicable ultimate repose statute is the ultimate repose provision of ORS 12.110(4) and the question raised by this motion under either scenario is whether plaintiff has plead a viable misrepresentation to toll the statute. It is respectfully submitted that plaintiff has not alleged viable misrepresentations in either complaint and his claim is time barred.

DATED this 12th day of April, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of April , 2007, I caused to be served a true copy of the foregoing DEFENDANT HOLY ROSARY MEDICAL CENTER'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL REPLY BRIEF by the method indicated below,

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile Transmission
☐ Electronic Submission

and addressed to each of the following individuals:

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Medical Center

CERTIFICATE OF SERVICE